Hospital Pantai Ayer Keroh Sdn Bhd v Lu Wei Hong

HIGH COURT (MELAKA) — CIVIL APPEAL NO 1–11–3 OF 2004
LOW HOP BING J
22 FEBRUARY 2005

Civil Procedure — Summary judgment — Application for — Dismissal of — Appeal — Whether plain and obvious case in which summary judgment should be given — Whether triable issues raised

At the request of the respondent, the appellant, a private hospital ('the hospital'), provided medical treatment and accommodation to the respondent, for which the necessary expenses amounted to RM9,185.75. The appellant through its solicitors had delivered to the respondent a notice of demand. This was an appeal by the appellant against the decision of the learned magistrate who had dismissed the appellant's application for summary judgment. The question before the court was whether the instant appeal revolved around a plain and obvious case in which summary judgment should be given in favour of the appellant or whether there were triable issues to warrant the full trial of the action before the magistrate's court.

Held, dismissing the appeal:

This was not a plain and obvious case for summary judgment to be entered for the appellant. The authorities did not support the appellant's contention for the purposes of obtaining summary judgment based on the doctrine of privity of contract, as full trial had been conducted. The issue of unjust enrichment was a matter to be resolved at the full trial (see para 14).

[**Bahasa Malaysia summary**

Atas permintaan responden, perayu, sebuah hospital swasta ('hospital itu') telah membekalkan rawatan perubatan dan tempat tinggal kepada responden, di mana perbelanjaan keperluan terjumlah kepada RM9,185.75. Perayu melalui peguamnya telah menyerah kepada responden satu penyataan tuntutan. Ini adalah rayuan oleh perayu terhadap keputusan majistret yang arif yang menolak permohonan perayu untuk penghakiman terus. Persoalan di hadapan mahkamah adalah sama ada rayuan ini berkisar satu kes yang jelas dan nyata di mana penghakiman terus harus dibenarkan memihak kepada perayu atau sama ada terdapat isu-isu yang perlu dibicarakan yang hanya boleh diputuskan selepas satu perbicaraan yang penuh di hadapan mahkamah majistret.

Diputuskan, menolak rayuan itu:

Ini bukan satu kes yang jelas dan nyata di mana penghakiman terus boleh diberi kepada perayu. Autoriti-autoriti yang dikemukakan tidak menyokong penyataan perayu untuk penghakiman terus berdasarkan doktrin priviti kontrak kerana

satu perbicaraan yang penuh telah dijalankan. Isu 'unjust enrichment' adalah isu yang perlu diselesaikan dalam perbicaraan penuh (lihat perenggan 14).]

Notes

For cases on application for summary judgment, see 2(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 5782–5815.

Cases referred to

Kepong Prospecting Ltd & Ors v Schmidt [1968] 1 MLJ 170 (refd)
Lipkin Gorman (a firm) v Karpnale Ltd [1991] 3 WLR 10 (refd)
New Kok Ann Realty Sdn Bhd v Development & Commercial Bank Ltd, New Hebrides (in liquidation) [1987] 2 MLJ 57 (refd)
Siow Wong Fatt v Susur Rotan Mining Ltd & Anor [1967] 2 MLJ 118 (refd)

Legislation referred to

Contracts Act 1950 s 71
Courts of Judicature Act 1964 s 28(1)

Appeal from: Summons No 720–1797 of 2002 (Magistrates' Court, Melaka)

Sharifah Shewikar Alhabshi (Zairin bte Dzainal Abidin with her) (Taye & Co) for the plaintiff.
Abdullah bin Hj Abdul Mutalib (Abdullah & Co) for the defendant.

Low Hop Bing J:

I APPEAL

[1] This is an appeal by the appellant–plaintiff ('the plaintiff') against the decision of the learned magistrate who had on 29 December 2003 dismissed the plaintiff's application for summary judgment for the sum of RM9,185.75.

[2] As the amount in dispute is less than RM10,000 this appeal is governed by s 28(1) of the Courts of Judicature Act 1964, which is reproduced as follows:

> 28 Civil appeals from subordinate courts.
>
> (1) Subject to any other written law, no appeal shall lie to the High Court from a decision of a subordinate court in any civil cause or matter where the amount in dispute or the value of the subject matter is ten thousand ringgit or less except on a question of law.

[3] The question of law which was presented for the plaintiff reads as follows:

> Tiada priviti kontrak antara perayu dengan pihak ketiga pertama (Tahan Insuran (M) Berhad) ('Tahan') dan pihak ketiga kedua (IHM Sdn Bhd ('IHM') untuk perayu menuntut daripada Tahan dan IHM bagi kos rawatan perubatan yang diberikan oleh perayu kepada responden atas permintaan responden berjumlah RM9.185.75.

My translation:

> No privity of contract between the appellant and the first third party (Tahan Insuran (M) Bhd) ('Tahan') and the second third party (IHM Sdn Bhd) ('IHM') for the appellant to claim from Tahan and IHM the sum of RM9,185.75 as the costs of medical treatment provided by the appellant to the respondent at the request of the respondent.

[4] I shall deal with this so-called question of law later in my judgment.

II FACTUAL BACKGROUND

[5] From the affidavits filed by the parties herein, prima facie the facts are that at the request of the defendant, the plaintiff, a private hospital ('the hospital'), provided medical treatment and accommodation to the defendant from 10 to 15 July 2000, for which the necessary expenses amounted to RM9,185.75. The plaintiff through its solicitors had delivered to the defendant a notice of demand dated 10 June 2002. The defendant was admitted to the hospital allegedly with the agreement of the plaintiff through one Dr Pang Kim Keng ('Dr Pang') who had examined the defendant and found him to have kidney problems which had to be treated by way of surgical operation.

[6] The defendant was allegedly covered by a policy of insurance issued by Tahan and IHM for the period from 15 March 2000 to 14 March 2001. It was alleged that on Dr Pang's advice that the costs of the operation could be claimed by the plaintiff from Tahan and IHM upon the defendant's production of the card from IHM at the payment counter of the hospital and without any admission fee as the card from IHM was retained by the plaintiff. The defendant agreed to undergo the operation. However on 15 July 2000, the final day of the hospitalisation, Dr Pang informed the defendant that the plaintiff could not claim from Tahan and IHM. Hence, the plaintiff's claim which is now the subject matter of this appeal.

III PRIVY OF CONTRACT

[7] In relying on the absence of privity of contract between the plaintiff on the one hand and Tahan and IHM on the other, learned counsel Sharifah Shewikar Alhabshi and Zairin bte Dzainal Abidin for the plaintiff referred to *Kepong Prospecting Ltd & Ors v Schmidt* [1968] 1 MLJ 170 PC.

[8] Defendant's learned counsel Mr Abdullah bin Hj Abdul Mutalib contended that on the facts there are triable issues.

[9] In my view, having regard to the facts and circumstances prevailing in this appeal, the so-called above question of law is actually a statement as opposed to a question, which may be more appropriately formulated as follows:

> Where a person such as the defendant who has taken a healthcare insurance policy for, *inter alia*, medical treatment and hospitalisation in a hospital as defined therein, and who has been given such medical treatment and hospitalisation, is the defendant entitled to rely on the privity of contract in order to require the plaintiff to claim from the insurer for the expenses incurred thereby?

[10] The doctrine of privity of contract was considered by the Privy Council in *Kepong Prospecting*. This authority does not support the plaintiff's contention that for the purposes of obtaining summary judgment based on the doctrine of privity of contract, as full trial had been conducted there.

IV SECTION 71 CONTRACTS ACT 1950

[11] In support of the plaintiff's reliance on the doctrine of privity of contract, plaintiff referred to s 71 of the Contracts Act 1950 pertaining to the obligation of a person enjoying the benefit of non-gratuitous act, and also *Siow Wong Fatt v Susur Rotan Mining Ltd & Anor* [1967] 2 MLJ 118 PC; and *New Kok Ann Realty Sdn Bhd v Development & Commercial Bank Ltd, New Hebrides (in liquidation)* [1987] 2 MLJ 57 (SC).

[12] In my judgment, it is to be noted that s 71 does not regulate the doctrine of privity of contract. Further *Siow Wong Fatt* and *New Kok Ann Realty* were also not cases relating to the entry of summary judgment under O 26A. In both these cases, full trials had been conducted, in which event they do not lend any assistance in the plaintiff's application for summary judgment.

V UNFAIR ENRICHMENT

[13] It was contended for the plaintiff that the defendant should not be unjustly enriched as a result of his refusal to pay the sum of RM9,185.75, citing *Lipkin Gorman (a firm) v Karpnale Ltd* [1991] 3 WLR 10 (HL).

[14] The question before me is whether the instant appeal revolves around a plain and obvious case in which summary judgment should be given in favour of the plaintiff or whether there are triable issues to warrant the full trial of the action before the magistrate's court. The issue of unjust enrichment is a matter to be resolved at the full trial as has been done in *Lipkin Gorman* which is again not an authority for summary judgment.

VI CONCLUSION

[15] On the controversies of facts and circumstances as alluded to above, it is clear to me that this is not a plain and obvious case for summary judgment to be entered for the plaintiff. I therefore hold that the magistrate has not erred in dismissing the plaintiff's application for summary judgment and I affirm that decision. This appeal is hereby dismissed with costs, and the action shall proceed by way of a full trial in the magistrate's court.

Appeal dismissed with costs.

Reported by John Paul Simon